

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 725
Case No. 90-15
(Text Amendment - Fair Housing Amendments Act)
November 16, 1992

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on Monday, June 24, 1991. At that hearing session, the Zoning Commission considered a proposal of the District of Columbia Office of Planning (OP) to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, pursuant to 11 DCMR 102. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

By memorandum dated August 29, 1990, OP submitted a proposal that provided for the implementation of the provisions of the Fair Housing Amendments Act of 1988 related to community-based residential facilities (CBRFs).

Prior to mid-1981, four types of supervised residential establishments were regulated: Personal Care Homes, Philanthropic or Eleemosynary Institutions, Convalescent or Nursing Homes, and Halfway Houses or Social Service Centers. With the exception of Convalescent or Nursing Homes and Halfway Houses or Social Service Centers under Federal or District operation, supervised residential establishments were permitted only as special exceptions in the lower-density residential zones.

Several court decisions (most notably Dixon v. Weinberger, Evans v. Washington and Burgos v. Washington) and new Federal legislation in the mid-to-late 1970s demonstrated a need for a comprehensive network of community-based residential facilities for persons in need of supervision and/or assistance. Public hearings on new zoning regulations designed to accommodate and implement the land use aspects of providing CBRFs were held on November 27, 1978, and May 21 and 24, 1979.

By Z.C. Order No. 347 dated July 9, 1981, the Zoning Commission established the present system of regulating CBRFs. That system, in part, permits not more than four (4) persons to be cared for as a matter-of-right in CBRFs of minimal neighborhood impact (also known as Class A CBRFs).

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The present system includes seven (7) categories of CBRFs, which were cooperatively developed by the Office of Planning, the Department of Human Services and other public and private entities.

These seven categories of CBRFs include Youth Residential Care Home; Community Residence Facility; Health Care Facility; Emergency Shelter; Youth Rehabilitation Home; Adult Rehabilitation Home; and Substance Abusers Home.

The present regulations permit more community residence facilities than previously permitted to locate as a matter-of-right in residential zones (for a limited number of residents) and, in some cases, with a "Spacing Requirement". Youth Rehabilitation Homes, Adult Rehabilitation Homes and Substance Abusers Homes are permitted only as special exceptions, regardless of the number of residents housed or zone district in which located.

In conjunction with the requirements of Z.C. Order No. 347, the Departments of Human Services, Corrections, and Consumer and Regulatory Affairs developed licensing requirements for community-based residential facilities which parallel the new use classifications in the Zoning Regulations. These licensing requirements are contained in Title III of the D.C. Code.

In 1979, the Department of Human Services created a Central Referral Bureau which approves all placements in CBRFs. In 1984, the Office of Community-Based Residential Facilities was established to coordinate and monitor CBRFs throughout the District of Columbia.

Since September 1989, the Office of Corporation Counsel, the Department of Consumer and Regulatory Affairs, the Department of Human Services, the City Administrator, the Office of Community-Based Residential Facilities, the Office of Policy and Planning, and the Office of Planning had been assessing the need for modification to the Zoning Regulations as well as other aspects of the Community-Based Residential Facilities system as a result of the Fair Housing Amendments Act.

In late 1989, the Zoning Commission heard a presentation sponsored by the Mental Health Law Project on the land use and zoning implications of the recently enacted Federal law, the Fair Housing Amendments Act of 1988. By memorandum dated May 14, 1990, OP provided the Commission with related information and material about the impact of the Fair Housing Amendments Act. In its report, OP suggested that the Commission sponsor a forum to hear from District agencies involved in the analysis of the impacts of the Fair Housing Amendments Act on CBRFs. This forum was held on July 19, 1990 with the participation of several District agencies involved with community-based residential facilities.

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As a result of the Fair Housing Amendments Act's explicit inclusion of handicapped persons as a protected class, the District of Columbia reviewed its laws and regulations to determine the effect of the Act and to ascertain where modifications were required. The CBRF Taskforce was convened to assess provisions of existing regulations in the housing and land use regulations areas which could be subject to legal challenge.

While the CBRF provisions of the Zoning Regulations do not explicitly treat handicapped individuals differently from others, the effect of the application of the regulations may inadvertently deny handicapped individuals in a group residential setting equal rights when compared to non-handicapped individuals.

This occurs directly as a result of the definition of "family" in 11 DCMR 199, which reads:

"Family - one (1) or more persons related by blood, marriage, or adoption, or not more than six (6) persons who are not so related including foster children, living together as a single housekeeping unit using certain rooms and housekeeping facilities in common; Provided that the term family include a religious community having not more than fifteen (15) members."

Because the CBRF provisions of the Zoning Regulations allow only up to four residents as a matter-of-right for certain categories of facilities and also require Board of Zoning Adjustment (BZA) approval and impose spacing requirements on certain categories of facilities with five to eight residents, these provisions could be found to discriminate against handicapped individuals under the provisions of the Fair Housing Amendments Act.

By definition, up to six unrelated persons constitute a family for zoning purposes. One-family dwellings, therefore, may be occupied by a group of six unrelated individuals without the need for a certificate of occupancy of a single-family dwelling by a family related by blood or marriage. (Section 3203.1 of the Zoning Regulations requires a Certificate of Occupancy for use of any structure or land for use as other than a one-family dwelling.

The Office of Corporation Counsel, by memorandum dated May 19, 1990, noted that up to six unrelated adults can live anywhere in an R-1 District but only four unrelated handicapped adults who need to live in a community-based residential facility may live in an R-1 District without restriction. CBRF's for five to eight persons are permitted as a matter-of-right so long as there is not another CBRF housing five or more persons in the same square or within 1,000 feet. The Corporation Counsel memorandum states:

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"This concentration requirement imposes more restrictive treatment for CBRF's housing five or six individuals who are likely to be handicapped."

It is this aspect, placing greater restrictions on CBRFs which may house handicapped persons than are placed upon unrelated adults occupying a dwelling, which could be subject to challenge under the provisions of the Fair Housing Amendments Act if there is no legitimate government interest served by this difference in treatment. The Corporation Counsel's memorandum also notes that rooming and boarding houses, fraternity and sorority houses and dormitories are permitted as a matter-of-right in the R-4 District while the limitations on CBRFs are relaxed only lightly".

The notice of public hearing, which reflected the OP recommendations dated August 29, 1990, proposed to increase the maximum number of residents allowed in "Class A" facilities from the current four to eight, with no spacing requirement. This in effect, eliminated the "5 to 8" residents category in the R-1, R-3, R-4 and C-1 zones for "Class A" facilities (Youth Residential Care Homes, Community Health Care Facility, Community Residence Facility) which are now permitted as special exceptions and have spacing requirements.

As a result of these changes (which are more in line with the definition of up to six unrelated individuals as a family), the notice of public hearing proposed that a maximum number of two staff persons be added as a matter-of-right, in the up to eight residents category for "Class A" facilities.

"Class A" facilities in the R-5, SP, W, CR and C-2 zones would be modified to permit "9 to 15" residents as special exceptions with spacing requirements.

The treatment of all "Class B" and "Class C" facilities remained the same as would parking requirements which required one space for up to eight residents, two spaces for 9 and 15 residents and "as determined by the BZA" for more than 15 persons in all districts except in the C-3, C-4, and C-5 zones.

The District of Columbia Office of Planning, by memorandum dated June 10, 1991 and by testimony presented at the public hearing supported the proposal as contained in the notice of public hearing. OP stated the following:

"It is as a result of the District's attempt to respond positively to the Fair Housing Amendments Act that the proposed regulations have been developed. This Act leads the District government to conclude that our current CBRF zoning regulations are vulnerable to

challenge since Class A facilities are those which are most likely to house people who come under the protection of the Fair Housing Amendments Act; the handicapped. The Office of Planning recognizes the magnitude of the proposed changes but also recognizes that the District cannot ignore its own responsibilities regarding its citizens who are in need of assistance. OP, therefore, recommends that the Commission adopt the proposed regulations as advertised with the proviso that the public hearing process is a process which can be used to gather additional information which may, in turn, provide alternative solutions to this issue."

The District of Columbia Department of Human Services, by statement dated June 4, 1991 and by testimony presented at the public hearing, supported the proposal to permit eight residents as a matter-of-right in CBRFs in low density residential zone districts.

The District of Columbia Department of Housing and Community Development, by letter dated June 10, 1991, supported the proposed amendments to the Zoning Regulations.

The District of Columbia Department of Public Works, by memorandum dated June 6, 1991, had no objections to the proposal because there were no major transportation impacts associated therewith.

The District of Columbia Metropolitan Police Department, by letter dated June 4, 1991, indicated that it had no reason to suggest any restrictions of the rights of the disabled to have full and free access as all others do.

The District of Columbia Office of Community-Based Residential Facilities, by statement dated June 20, 1991 and by testimony at the public hearing, supported the proposal.

The District of Columbia Department of Consumer and Regulatory Affairs, by memorandum dated July 2, 1991, concluded that reference to applicable municipal regulations should be included in the proposal, and noted that existing operators of CBRFs with four residents will have to comply with licensure, construction and fire regulations, if they increase the numbers of their residents to eight.

Advisory Neighborhood Commission (ANC) 3F, by letter dated June 6, 1991, opposed the proposal because institutional uses are not compatible with R-1 through R-2 zone districts, the increase of residents will change the density and character of such zone districts, and the current limit on CBRF residents is a reasonable restriction and not inconsistent with the Fair Housing Amendments Act.

ANC-3C, by resolution dated July 3, 1991, opposed the increase to eight residents, but supported an increase to six residents and the elimination of spacing requirements for Class A CBRFs of five or six residents.

ANC-3D, by letter dated July 12, 1991, opposed the proposal because the increase will change the character of "family neighborhoods" and will create an institution-type facility that would not assimilate well into the neighborhoods. ANC-3D supported an increase to six residents.

ANC-6B, by resolution dated July 18, 1991 and by letter dated August 2, 1991, opposed an increase to eight residents and supported an increase to six residents. ANC-6B believed that better treatment could be provided to residents of a smaller CBRF.

The Commission heard testimony from several persons and received many letters in support of the proposal. Issues that were raised included, but were not limited to, the following:

1. The proposal does not go far enough and should provide an increase for Class B and Class C CBRFs;
2. The proposal is a move in the right direction for people in need of receiving decent housing and treatment; and
3. The proposal complies with the Fair Housing Amendments Act.

The Commission also heard testimony from several persons and received many letters in opposition to the proposal. Issues that were raised and not previously mentioned include, but were not limited to, the following:

1. The proposal goes too far by permitting CBRFs to house more residents that could be housed by other unrelated people who complied with the zoning definition of "family";
2. The existing spacing requirements are discriminatory and contrary to the Fair Housing Amendments Act; and
3. The existing Zoning Regulations are not discriminatory because CBRFs are institutions and not "free market" housing.

The Commission concurs with the various ANCs, city agencies, and others that believe the Zoning Regulations may be discriminatory by restricting the number of Class A CBRF residents to a level that would not be restricted if the building was not a CBRF.

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The Commission also believes that the space requirements in the current regulations and the classification of CBRFs, based on neighborhood impact, are appropriate and are not inconsistent with "reasonable restrictions" that are contemplated in the Fair Housing Amendments Act.

The Commission believes that increasing the matter-of-right CBRF residents to eight may be discriminatory, because others who are not related by blood, marriage or adoption; and who want to lawfully establish a family household would be limited to six persons, pursuant to the zoning definition of family.

The Commission further believes that after considering and balancing all of the issues related to the proposal, its decision is not inconsistent with the intent of the Fair Housing Amendments Act, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

A notice of proposed rulemaking was published in the District of Columbia Register on September 11, 1992 (39 DCR 6864). As a result of the publication of that notice, comments were received from the Dixon Implementation Monitoring Committee (DIMC) dated October 2, 1992.

The proposed action of the Zoning Commission to amend the Zoning Regulations was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated October 1, 1992, found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

On November 16, 1992 at its regular monthly meeting, the Zoning Commission considered the DIMC comments, which proposed lifting density restrictions on emergency shelters and substance abuser homes, and amending the special exception procedures. The Commission determined that the issues by DIMC would have to be addressed by the CBRF Task Force or in a process that would require further hearings by the Zoning Commission.

The Zoning Commission has accorded ANCs 3C, 3D, 3F and 6B the "great weight" consideration to which they are entitled.

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In consideration of the reasons set forth herein, the Zoning Commission of the District of Columbia hereby orders **APPROVAL** of amendments to the Zoning Regulations. The specific amendments are as follows:

1. Amend paragraphs 201.1(n), 601.2(a), and 901.1(f) of the Zoning Regulations to permit as a matter-of-right not more than six (6) persons, excluding supervisors or staff and their families, to reside in certain types of community-based residential facilities (CBRF) by creating new subparagraphs 201.1(n)(1) 601.2(a)(1) and 901.1(f)(1) to read as follows:

201.1(n)(1)	Youth residential care home, community
601.2(a)(1)	residence facility, or health care facility
901.1(f)(1)	for not more than six (6) persons, not
	including resident supervisors or staff and
	their families; or for not more than eight (8)
	persons, including resident supervisors or
	staff and their families and providing that
	the number of persons being cared for shall
	not exceed six (6).

2. Retain the matter-of-right provisions of the Zoning Regulations for the number of emergency shelter residents, but create new subparagraphs 201.1(n)(2), 601.2(a)(2), and 901.1(f)(2) to read as follows:

201.1(n)(2)	Emergency shelter for not more than four (4)
601.2(a)(2)	persons, not including resident supervisors or
901.1(f)(2)	staff and their families.

3. Amend the following subsections and paragraphs of the Zoning Regulations to include the phrase "resident supervisors or staff and their families", instead of the existing phrase "resident supervisors and their family(ies)":

201.1(n)	304.8	513.1(b)	711.1(c)
201.1(o)	305.1	513.1(c)	711.1(d)
218.1	305.8	513.1(d)	721.5
218.7	306.1	601.2(a)	732.1(a)
219.1	335.1	601.2(b)	732.1(b)
219.7	350.4(f)	616.1(a)	732.1(c)
220.1	357.1	616.1(b)	732.1(d)
220.7	358.1	616.1(c)	901.1(f)
221.1	358.8	616.1(d)	901.1(g)
300.3(d)	359.1	701.2	913.1(a)
303.1	359.3	701.3	913.1(b)
303.8	360.1	711.1(a)	913.1(c)
304.1	513.1(a)	711.1(b)	913.1(d)

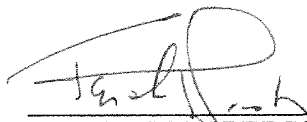
4. Amend the following subsections and paragraphs of the Zoning Regulations to change all references to the number of residents from "five (5)" to "seven (7)":

201.1(o)	303.2	306.2	358.3
218.2	303.3	306.3	601.2
219.2	304.2	335.2	701.2
220.2	304.3	335.3	701.3
221.2	305.2	350.4(f)	721.5
300.3(d)	305.3	358.2	901.1(g)

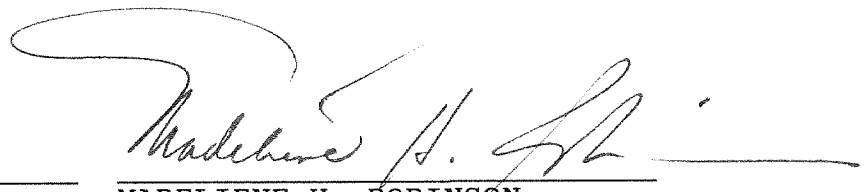
Vote of the Zoning Commission at the regular meeting on November 18, 1991: 4-0 (Tersh Boasberg, Lloyd D. Smith, William L. Ensign and Maybelle Taylor Bennett, to approve as amended - John G. Parsons, not voting not having participated in the case).

This order was adopted by the Zoning Commission at its regular meeting on November 16, 1992 by a vote of 4-0 (Maybelle Taylor Bennett, William L. Ensign and Tersh Boasberg, to adopt, and Lloyd D. Smith, to adopt by absentee vote - John G. Parsons, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on JAN 22 1993



TERSH BOASBERG
Chairman
Zoning Commission



MADELIENE H. ROBINSON
Acting Director
Office of Zoning